



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Mr. Albert López
Attorney at Law
335 South Presa Street
San Antonio, Texas 78205

OR94-586

Dear Mr. López:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24907.

The City of Bandera (the "city") received a request for "copies of any and all files, investigations, police reports, photos, documents and any other items relating to any drowning incident or any other accidents at the Bandera City Park." The city has been sued by the requestor's clients in connection with the death of an individual who drowned in the city park. You contend that the requested documents are excepted from disclosure under section 552.103(a) of the Open Records Act.

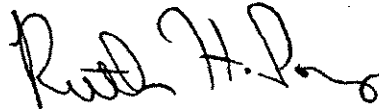
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of the section 552.103(a) test for information to be excepted from public disclosure. You have provided information that shows the city is involved in pending litigation. A review of the documents submitted to this office as responsive to the request shows that they are related to the litigation.

However, you may not withhold all of the documents submitted to this office under section 552.103(a). Generally, when information has been obtained by all parties to the litigation, whether through discovery or otherwise, no section 552.103(a) interest will exist with respect to those documents. Open Records Decision No. 349 (1982) at 2. You submitted documents to this office that have already been provided to the opposing parties in the litigation through the discovery process, and thus may not be withheld from

disclosure. We have also marked several documents which the opposing parties have otherwise had access to or seen. This information must be provided to the requestor. As to the remaining documents, to the extent that the opposing parties have not had access to these documents they may be withheld from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is also within the authority's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 24907

Enclosures: Marked documents

cc: Mr. Adam Poncio
Law Offices of Frank Herrera
175 East Houston Street, Suite 250
San Antonio, Texas 78205-2240
(w/o enclosures)